

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Christopher GAGE, et al.	:	Confirmation Number: 8638
	:	
Application No.: 09/557,708	:	Group Art Unit: 2141
	:	
Filed: April 25, 2000	:	Examiner: K. Shingles
	:	
For: URL BASED STICKY ROUTING TOKENS USING A SERVER SIDE COOKIE JAR	:	

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S ANSWER dated September 18, 2008.

The Examiner's response to Appellants' arguments submitted in the Fifth Appeal Brief of May 29, 2008 (hereinafter the Fifth Appeal Brief), raises additional issues and underscores the factual and legal shortcomings in the Examiner's rejection. In response, Appellants rely upon the arguments presented in the Fifth Appeal Brief, and the arguments set forth below.

REMARKS

Appellants have compared the statement of the rejection found on pages 3-11 of the Examiner's Answer with the statement of the rejection found on pages 3-11 of the Seventh Office Action. Upon making this comparison, Appellants have been unable to discover any substantial differences between the respective statements of the rejection. As such, Appellants proceed on the basis that the Examiner's sole response to Appellants' Fifth Appeal Brief is found on pages 11-15 of the Examiner's Answer.

Rejection under 35 U.S.C. § 101

The Examiner's sole response to Appellants' arguments on pages 6 and 7 of the Fifth Appeal Brief is found on page 11 of the Examiner's Answer and is reproduced below:

Examiner respectfully disagrees. The "computer program product" and "computer readable code means" instantiate a computer readable medium that's statutory under 35 USC 101. Appellant's disclosure does not mention or define the computer program product or the code means, therefore the statutory compliance has not been established. The rejection has therefore been maintained.

The Examiner appears to mistakenly believe that a claim term that is not specifically defined in a specification can be given any (factually-unsupported) interpretation by the Examiner. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification," In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), and the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

1 In referring to a claim directed to a computer program product, the Board of Patent
2 Appeals and Interferences, within the non-precedential decision of Ex parte Bo Li, (Appeal No.
3 2008-1213), stated "[i]t has been the practice for a number of years that a 'Beauregard Claim' of
4 this nature be considered statutory at the USPTO as a product claim." At the time of filing this
5 Reply Brief, over 18,000 patents have issued with at least one claim including the exact phrase
6 "computer program product," and over 2,600 patents have issued at with at least one claim
7 including the exact phrase "computer readable code means." As such, given the wide-spread use
8 of these terms, Appellants respectfully submit that one having ordinary skill in the art would (i)
9 recognize a definite meaning for these phrases, and (ii) recognize that these phrases encompass
10 statutory subject matter.

11
12 For the Examiner to call into question whether or not claims 12-21 are directed to
13 statutory subject matter also calls into question the thousands of issued patents including the
14 exact phrases being relied upon by the Examiner to reject these claims. Moreover, the
15 Examiner's rejection is accompanied by the barest of analysis, which referring to page 3 of the
16 Examiner's Answer, simply states:

17 Claims 12 - 21 recite "A computer program product" and "computer readable code means" which
18 are directed to software, per se, and are thus non-statutory unless computer-implemented on a
19 computer-readable medium.
20

21 Given the consistent treatment, by the USPTO, of these types of claims as statutory subject
22 matter, and given the paucity of the Examiner's analysis, Appellants respectfully submit that the
23 Examiner has erred in rejecting claims 12-21 under 35 U.S.C. § 101.

Rejection under the Second Paragraph 35 U.S.C. § 112

In response to Appellants' arguments with regard to the alleged indefiniteness of the phrase "all filtering" within claim 9, the Examiner asserted the following in the paragraph spanning pages 11 and 12 of the Examiner's Answer:

Examiner respectfully disagrees. Claim 9 states, "A method as claimed in claim 1 wherein all filtering is performed within the dispatcher". Citing "all filtering" gives the impression that the filtering function has been mentioned prior to this citation and is known function performed by the dispatcher. The lack of filtering in the previous claim, indicates that filtering is being introduced this instant claim. However this claim language is not consistent with this a new function introduction, per se, since "all filtering" connotes that the filtering rejection has therefore been maintained.

The Examiner's arguments would be correct **if** claim 9 recites "all said filtering is performed within the dispatcher" (emphasis added). However, claim 9 only recites "all filtering is performed within the dispatcher." Thus, the limitation of "filtering" is first introduced within claim 9, and the Examiner's analysis is based upon an incorrect (and legally unsupported) reading of the claim.

By analogy, consider the following hypothetical claims:

1. A method of building a book shelve, comprising:
joining a pair of horizontal members and a pair of vertical members to
form a rectangular frame; and
attaching a plurality of shelves to the frame.
2. The method of claim 1, wherein all bracing involves attaching a
bracket to both the frame and one of the shelves.

Claim 2 introduces the concept that bracing occurs, and that all bracing involves a particular technique (i.e., attaching a bracket to both the frame and one of the shelves). Similarly, claim 9 introduces the concept that the filtering occurs, and that all filtering occurs within the dispatcher.

As stated in Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004), "[o]nly when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite." M.P.E.P. § 2173.02 states the following:

If upon review of a claim in its entirety, the examiner concludes that a rejection under 35 U.S.C. 112, second paragraph, is appropriate, such a rejection should be made and an analysis as to why the phrase(s) used in the claim is "vague and indefinite" should be included in the Office action. (emphasis added).

The Examiner, however, has not met this burden of setting forth an analysis as to why the language of the claim is "insolubly ambiguous" and "vague and indefinite." A plain reading of claim 9 yields the simple concept that filtering occurs and that all filtering occurs within the dispatcher. This is also consistent with claim 7, upon which claim 9 depends, which recites "an outbound data stream filter." Appellants, therefore, respectfully submit that the Examiner has failed to establish that claim 9 is "vague and indefinite" within the meaning of the second paragraph of 35 U.S.C. § 112.

Non-Compliant Examiner's Answer

On page 8 of the Fifth Appeal Brief, Appellants pointed out where the Examiner's Answer is required to include particular content discussed in M.P.E.P. § 1207.02, yet the Examiner has completely ignored this requirement. As noted throughout the prosecution of this application and in the Fifth Appeal Brief, the Examiner has failed to properly establish the facts underlying the Examiner's analysis. Appellants' position is that these omissions in the Examiner's prima facie analysis are correctable by the Examiner, and the correction of these omissions would help both Appellants and the Honorable Board gain a better understanding of

1 the findings of facts and analysis employed by the Examiner in rejecting the claims. Thus,
2 Appellants respectfully recommend that the Honorable Board remand the present application to
3 the Examiner to address these omissions.¹
4

5
6 On pages 9 and 10 of the Fifth Appeal Brief, Appellants presented arguments that the
7 Examiner's characterization of the applied prior art was inconsistent. Specifically, on one hand,
8 the Examiner asserts that Kunzelman teaches certain limitations, but on the other hand, the
9 Examiner asserts that Kunzelman fails to teach these same limitations. Thus, the Examiner has
10 failed to properly characterize the scope and content of the applied prior art, which is one of the
11 *Graham* factual inquiries. This inconsistent analysis by the Examiner, however, was not
12 addressed in the Examiner's Answer.
13

14
15 In response to arguments presented in the last two paragraphs on page 11 and the first
16 two paragraphs on page 12 of the Fifth Appeal Brief, the Examiner asserted the following:

17 Examiner respectfully disagrees. *Masters* teaches the implementation of cookies with
18 timestamps that expire (*col.2 line 59-col.3 line 7*) which is an indication that the cookie
19 information is old. The server array controller is capable of determining if the cookie's
20 timestamp has expired (*col.7 lines 26-37, col.8 lines 38-53*), wherein a session-expiration
21 and token time-stamping are techniques supported in the primary reference *Kunzelman et al*
22 (*col.4 lines 40-45, col.6 lines 22-32*). The teaching of *Masters* is a valid implementation of

¹ The Board has persistently declined to uphold an Examiner because of omissions in the Examiner's half of the record. *E.g., Ex parte Daleiden*, Appeal 2007-1003 (Mar. 14, 2007) (remanding because examiner failed to respond to arguments in the Appeal Brief); *Ex parte Rozzi*, 63 USPQ2d 1196, 1200-03 (BPAI 2002) (remanding without decision because of a host of examiner omissions and procedural errors); *Ex parte Gambogi*, 62 USPQ2d 1209, 1212 (BPAI 2001) ("We decline to tell an examiner precisely how to set out a rejection."); *Ex parte Jones*, 62 USPQ2d 1206, 1208 (BPAI 2001) (refusing to adjudicate an issue that the examiner has not developed); *Ex parte Schricker*, 56 USPQ2d 1723, 1725 (BPAI 2000) ("The examiner has left applicant and the board to guess as to the basis of the rejection ... We are not good at guessing; hence, we decline to guess."); *Ex parte Braeken*, 54 USPQ2d 1110, 1112-13 (BPAI 1999) (noting that the appeal is "not ripe" because of omissions and defects in the examiner's analysis).

1 the above feature since the timestamp is associated with "the mapping of the relationship between
2 the client and the selected node server" (*col.9 lines 63-66*); thus the functionality of the claim
3 language is achieved by using a cookie's timestamp to determine if a client-server session is
4 binding or expired (i.e. "old"). (emphasis in original)
5

6 The Examiner newly cited column 7, lines 26-37 of Masters to support the Examiner's assertion
7 that Masters teaches "determining, at the network dispatching mechanism, if a session binding
8 indicated by said routing token is old." Upon reviewing this newly cited passage, Appellants
9 agree that this newly cited passage appears to teach these specific limitations.
10

11 However, the entire recited clause reads "if said URL contains a valid routing token,
12 further determining, at the network dispatching mechanism, if a session binding indicated by said
13 routing token is old" (emphasis added). Thus, as claimed, the step of determining if the URL
14 contains a valid routing token is performed before the step of determining if the routing token is
15 old. This portion of the claim, however, was not addressed in the Examiner's analysis.
16

17
18 On pages 12 and 13 of the Fifth Appeal Brief, Appellants presented arguments with
19 regard to the claimed "removing, by said particular server, said valid routing information from
20 the URL." The Examiner's response to these arguments is found in the paragraph spanning
21 pages 12 and 13 of the Examiner's Answer and is reproduced below:

22 Examiner respectfully disagrees. *Kunzelman et al* fail to specifically mention the term
23 "removing", however *Kunzelman et al* do teach that session tokens are encoded with URL wherein
24 in the process of the decoding the session token some of the session information is sent as out-of-
25 band data (*col.6 lines 43-57*), and "not all [of] the session information is passed to the source
26 server node" (*col.5 lines 50-58*). These teachings disclosed in *Kunzelman et al* are indications that
27 some session information, which functions as routing information (*col.4 lines 28-63, col.5 lines*
28 *21-31*), is removed from the URL in order to obtain any necessary out-of-band session
29 information. (emphasis in original)
30

1 Appellants respectfully submit that the Examiner's analysis is grossly misplaced. The teachings
2 referred to by the Examiner (i.e., see column 5, lines 38-58) describes a situation in which a
3 client receives a token 104 from Server A (i.e., a source server node), which directs the client to
4 Server B (i.e., a target server node). If "out-of-band" data is needed (i.e., state information
5 needed from migration from Server A to Server B), Server B sends a request 106 to Server A for
6 the out-of-band data. The request 106 sent from Server A to Server B is illustrated in Fig. 4 and
7 includes request details 400 and the session token 104 (column 5, lines 54-56).

8
9 As correctly noted by the Examiner, not all session information is passed to the source
10 server node (i.e., Server A) (column 5, lines 57-58). However, the Examiner incorrectly infers
11 from this teaching that the valid routing information is removed from the URL. "Session
12 information" is illustrated in Fig. 3 with reference number 302. Fig. 3, in addition to describing
13 session information 302, also describes a session ID 300. The individual elements of the session
14 information 302 and the session ID 300 are described in column 4, line 40 through column 5,
15 line 37.

16
17 As claimed, "valid routing information" is removed from the URL. However, the only
18 possible teaching of "valid routing information" described by Kunzelman is the teaching of the
19 "server node identifier," which is found within the session ID 300. Referring to elements (3)
20 through (9) in Table 1 of Kunzelman (column 4, lines 43-49), Appellants respectfully submit that
21 one having ordinary skill in the art would recognize that none of these elements could
22 correspond to the claimed valid routing information. Thus, although Kunzelman teaches that
23 "not all session information is passed to the source server node," Kunzelman fails to teach

1 "removing, by said particular server, said valid routing information from the URL" since the
2 valid routing information is not part of the session information.

3
4 The logic as to why Kunzelman keeps the routing information within the request 106 is
5 simple. The routing token indicates where information is to be routed, which in this case is
6 Server B. As described in column 5, lines 59-60, when Server A receives the request 106 from
7 Server B, "[Server A] supplies the out-of-band data to Server B (S8) in a response 108."
8 Without the request 106 including valid routing information (i.e., the address of Server B),
9 Server A would not be able to send the response 108 back to Server B.

10
11 Therefore, for the reasons stated above, Appellants maintain that the Examiner has
12 mischaracterized the scope and content of Kunzelman.

13
14
15 In response to arguments previously presented in the Fourth Appeal Brief and repeated
16 on page 14 of the Fifth Appeal Brief, the Examiner asserted the following on page 13 of the
17 Examiner's Answer:

18 Examiner respectfully disagrees. As discussed above in argument D, *Kunzelman et al*
19 teach that some session information, which functions as routing information (*col.4 lines 2863,*
20 *col.5 lines 21-31*), is removed from the URL in order to obtain any necessary out-of-band session
21 information (*col.6 lines 48-52*). The session/routing information gleaned from the URL is stored by
22 the server and uses the out-of-band session information as necessary when responding to client's
23 request (*col.5 line 49-col.6 line 5*). (emphasis in original)
24

25 Although Appellants have already established that the Examiner has mischaracterized
26 Kunzelman as teaching removing valid routing information from the URL, the Examiner's
27 reliance upon such a teaching is inapposite. Even if Kunzelman taught removing a particular
28 element does not necessarily equate to a teaching that Kunzelman stores the routing information.

1
2 The Examiner's other cited passage (i.e., column 5, lines 49 through column 6, lines 5) is
3 silent as to either storing routing information or storing the valid routing information such that
4 the valid routing information "can be accessed subsequently by an outbound data stream filter
5 during the processing of an outbound reply related to said request." As noted in the Fifth Appeal
6 Brief (and not addressed by the Examiner), the Examiner's analysis has not addressed this
7 particular limitation.

8
9

10 In the first full paragraph on page 15 of the Fifth Appeal Brief, Appellants presented
11 additional arguments as to claim 7. As discussed therein, these arguments were also presented in
12 the Fourth Appeal Brief, but the Examiner did not address these arguments in the Seventh Office
13 Action. Moreover, upon reviewing the Examiner's Answer, Appellants are unable to find any
14 response by the Examiner to these arguments. Thus, the Examiner has twice ignored these
15 arguments.

16
17

18 On pages 15 and 16 of the Fifth Appeal Brief, Appellants presented arguments as to the
19 Examiner improperly characterizing the scope and content of Brendel as teaching a "key for
20 accessing a server-side storage area for information regarding the persistent relationship and the
21 end user device." The Examiner's response to these arguments is found in the paragraph
22 spanning pages 13 and 14 of the Examiner's Answer and is reproduced below:

23 Examiner respectfully disagrees. *Brendel* clearly teaches the claimed features of
24 "creating, at the selected server, a token comprising at least an identifier for the selected server, a
25 date/time stamp, and a key, said key for accessing a server-side storage area for information

1 regarding the persistent relationship and the end user device". First off, *Brendel* discloses
2 "creating, at the selected server, a token comprising at least an identifier for the selected server" in
3 teaching that a server generates a SSL session ID for the encrypted session created between the
4 server and the client and also generates a server-assignment cookie that identifies the specific
5 server assigned to the user (*Abstract, col.4 lines 27-66, col.9 lines 2-12*). Next, *Brendel* teaches "a
6 date/time stamp" by disclosing as SSL session timeout which a common field used with sessions
7 to determine when the session was created and when it has expired (*col.4 lines 61-63, col.11 line*
8 *66-col.12 line 2*). Lastly, *Brendel* teaches the claimed feature of "a key, said key for accessing a
9 server-side storage area for information regarding the persistent relationship and the end user
10 device" by generating and implementing an encryption key that allows access to the server's
11 resources during the session that has been established (*Abstract, col.4 lines 19-50, col.11 lines 20-*
12 *22*). *Brendel* fails to explicitly teach that the cookie and session information are inserted into the
13 URL. However, *Masters* teaches the incorporation of cookie/session data into URL request for
14 providing routing information (*col.9 lines 63-66, col.10 lines 30-65, col.12 lines 48- 63*). (italics
15 in original) (underline added)
16

17 To teach the claimed "key for accessing a server-side storage area ...," in addition to
18 citing the Abstract, the Examiner newly cited column 4, lines 19-50 and column 11, lines 20-22
19 of *Brendel*. Upon reviewing the Abstract, Appellants are still unclear what particular teachings
20 the Examiner is relying upon to teach the limitations at issue.

21
22 Regarding the Examiner's first newly cited passage (i.e., column 4, lines 19-50), this
23 passage refers to Fig. 4 and 5A, which are described by *Brendel* as prior art. The encryption
24 described in column 4, lines 19-26 refers to the SSL encryption that occurs between the client
25 (i.e., web browser 30) and server (i.e., web server 32) and does not refer to a key to access a
26 server-side storage area for information regarding the persistent relationship and the end user
27 device. The discussion in column 4, lines 27-50 describes an established SSL session (see Fig.
28 5) and again refers to communication between the client and server. As such, the Examiner first
29 newly cited passage is completely silent as to the limitations at issue.

30
31 The Examiner second newly cited passage (i.e., column 11, lines 20-22) describes that
32 several packets "may be exchanged between the server and client to exchange keys and

1 certificates as the encrypted session is begun." As with the first newly cited passage, the
2 Examiner's second newly cited passage does not refer to a key to access a server-side storage
3 area for information regarding the persistent relationship and the end user device. Thus, the
4 Examiner has failed to establish that Brendel teaches the limitations for which the Examiner is
5 relying upon Brendel to teach.

7
8 In the paragraph spanning pages 16 and 17 of the Fifth Appeal Brief, Appellants
9 presented arguments as to Examiner's obviousness analysis. As discussed therein, these
10 arguments were also presented in the Fourth Appeal Brief, but the Examiner did not address
11 these arguments in the Seventh Office Action. Moreover, upon reviewing the Examiner's
12 Answer, Appellants are unable to find any response by the Examiner to these arguments. Thus,
13 the Examiner has twice ignored these arguments.

15
16 On pages 17-19 of the Fifth Appeal Brief, Appellants presented several arguments as to
17 the Examiner proposed combination of Gupta and Masters. The Examiner's response to these
18 arguments is found in the paragraph spanning pages 14 and 15 of the Examiner's Answer and is
19 reproduced below:

20 Examiner respectfully disagrees. *Gupta et al* teach that a session service "uses the
21 cookies to find a session associated with the user" (*col.11 line 42-col.12 line 2, col.12 lines 7-8*
22 *and 44-55*). This teaching from *Gupta et al* teaching is sufficient in retrieving the session key from
23 the cookie by allowing access to the server via login (*col.11 line 42-col.12 line 2*). The key used to
24 authenticate the user and to access the server, subsequently allows retrieval of session information
25 (*col. 7 lines 1-15*). Appellant's arguments are therefore unpersuasive and the rejection is
26 maintained. (emphasis in original)
27

1 Appellants have reviewed the Examiner's newly cited passages of column 11, line 42 through
2 column 12, line 2, and are still unclear as to the claimed retrieving a session key from a server-
3 side key cookie. The Examiner has neither identified the server-side key cookie or the session
4 key.

5
6 The Examiner's arguments, however, have only addressed a portion of Appellants'
7 arguments as to Gupta. Specifically, the Examiner has not addressed the other arguments
8 presented in the paragraph spanning pages 17 and 18 of the Fifth Appeal Brief. Moreover,
9 referring to pages 18 and 19 of the Fifth Appeal Brief, Appellants presented specific arguments
10 as to the secondary reference of Masters, but the Examiner's response is silent as to these
11 arguments regarding Masters. Thus, the Examiner has essentially ignored most of the arguments
12 presented on pages 17-19 of the Fifth Appeal Brief.

For the reasons set forth in the Fifth Appeal Brief, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 101, 103, 112.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: November 18, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320